

Site: Medley Farm
EPA: 7.9
Other: _____

JAN 14 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles W. Tisdale, Jr.
King & Spalding
2500 Trust Company Tower
Atlanta, Georgia 30303

Dear Mr. Tisdale:

By way of letters dated December 28 and 29, 1987, you, on behalf of your client, National Starch and Chemical Corporation, and the Medley Farm Site Steering Committee, objected to certain deadlines imposed by EPA in the negotiation of the administrative order on consent for the performance of the Medley Farm Site Remedial Investigation and Feasibility Study (RI/FS). You also charged the EPA with an unwillingness to exercise good faith in negotiating the consent order. I have considered your contentions and find myself in strong disagreement with them.

The time frames that the Region established in this case for the negotiation of an RI/FS consent order have been consistent with the requirements of CERCLA and have been reasonable. Moreover, the Agency has accommodated the Steering Committee's requests for additional time. The moratorium in this case was initiated on September 3, 1987, and ended on December 2, 1987. To facilitate settlement, EPA extended the moratorium until December 23, 1987. In addition, on October 16, 1987, by way of a telephone call with Les Oakes of your firm, Wayne Lee provided the Steering Committee with notice of EPA's rejection of the Committee's proposal to conduct an RI/FS for the Medley Farm Site once the Site is placed on the National Priorities List (NPL). The Committee then waited seventeen (17) days to make a good faith offer to perform the RI/FS. This offer was submitted to the agency on November 2, 1987, the day on which the initial sixty (60) day moratorium ended. The Steering Committee then waited until November 19, 1987 to provide EPA with written comments on the Agency's draft consent order for the RI/FS even though all of the members of the Committee had possessed copies of EPA's draft consent order since September 3, 1987.

RWLEE:jer:1-12-88

LEE > BORNHOLM

TOBIN

SARGENT

DEHNNS

HANKE

BOILEN

GREEN

STONEBRAKER

10294459



On December 10, 1987, EPA responded to the Steering Committee's November 19, 1987 comments. Your charge that many Steering Committee members did not receive this December 10 response until December 14 is misleading. You received the response on December 10, 1987 via a courier from your office. In addition, EPA's return receipts from its certified mailing indicate that all other Steering Committee members, with the exception of the Medleys and their business, received the EPA's response on December 12. Although the Medleys received the response on December 14, Mr. Lee has been advised by Mr. Oakes that neither the Medleys nor their business, Medley Concrete Works, are expected to sign the order and participate in the RI/FS. The Steering Committee then failed to communicate any discontent with the December 10 order until December 23, in spite of the Agency's notice, provided in the cover letter which accompanied the order, that the order had to be agreed to and signed by December 28, 1987.

You further contend that by way of its December 10 revision of the consent order EPA revised several provisions which the parties had agreed upon. EPA disagrees with this contention as the order as a whole was being negotiated and neither the Agency nor the Steering Committee had agreed to a final document. Further, substantive changes made in the order were the product of the ongoing negotiation process. Revisions made by EPA were the result of EPA's review of changes proposed by the Steering Committee and EPA's review of the order as a whole.

You contend that EPA's December 10 final consent order changes the dispute resolution provision so as to provide that stipulated penalties will begin to accrue on the first day that the signatories to the order seek EPA resolution of a dispute. This is not a change but is merely a clarification as the agency intended and has always understood that, implicit with the terms of this order, during the period of the dispute resolution process, penalties would continue to accrue. The language incorporated into EPA's December 10 order simply clarifies that such penalties will not be stayed during dispute resolution.

You also allege that EPA entered into a preauthorization agreement whereby the Agency would reimburse the responding members of the Committee for remedial response costs should the site not make the NPL. Although preauthorization was a proposal discussed at the September 3, 1987 meeting between the parties, the proposal was considered by the Agency and rejected.

You further argue that EPA unilaterally modified an agreed upon stipulated penalties clause. Again, EPA had not committed itself to any provision contained in the consent order as the entire order was being negotiated. EPA's changes to this provision were made in overall response to the Committee's proposed changes and were also designed to bring the order in line with the Agency's current stipulated penalty policy.

Furthermore, although you contend that the imposition of stipulated penalties should be contingent upon major violations of the consent order or RI/FS work plan, subsequent to receiving the December 10 version of the order you have made no attempt to delineate such major violations.

Also set forth in your December 28, 1987 letter is the contention that "EPA has substantially interfered with the Steering Committee's desire to move expeditiously to select a contractor to perform the RI/FS by delaying or refusing to give access to documents to the contractors the Committee is considering." As the contractors did not request access to the records relating to the Medley Site until the first week of December and they had all been granted such access by the end of the second week of December, I do not find this contention to be persuasive. Considering the volume of records involved, the fact that the Agency did not require the submission of Freedom of Information Act Requests and that access was provided within two weeks of the request, the Agency action was responsive and accommodating.

In light of the foregoing discussion, I believe EPA has been reasonable and has negotiated in good faith with the Respondents. Moreover, I do not believe a meeting with you to discuss the issues you raise is warranted. The Region established Monday December 28, 1987 as the date on which negotiations with the Steering Committee would terminate. Although these negotiations will not be extended, the members of the Committee will be given until 5:00 p.m., ~~Wednesday~~ ^{Thursday} January 21, 1987 to deliver signed copies of the December 28, 1987 order.

Sincerely,
/s/ Lee A. DeHihns, III
Acting Regional Administrator

Lee A. DeHihns, III
Acting Regional Administrator

cc: Steering Committee

[ADR]

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DEAR Chip

[ADR]

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National Starch and Chemical Corporation
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Dear Charles

[ADR]

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c/o of Mr. John P. Britton
Rainey, Britton, Gibbs and Clarkson
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John

P 320 344 939

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